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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

KAREN WISDEN, Plaintiff, Respondent and Cross-Appellant, v. JOHN SIMS, Defendant, Appellant and Cross-Respondent.	B200222 (Los Angeles County Super. Ct. No. BC272244)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert L. Hess, Judge. Affirmed.

Henderson Humphrey and J. Scott Humphrey for Defendant, Appellant and Cross-Respondent.

Andrews & Hensleigh and Joseph Andrews for Plaintiff, Respondent and Cross-Appellant.

This appeal arises from a fraudulent transfer action whose design was to effectuate the collection of a stipulated money judgment entered against a corporate entity in a prior lawsuit. The corporation, then in good standing, is now bereft of assets and defunct. In the current case, the trial court entered a judgment against a principal of the corporation. We affirm the judgment entered against the principal.

FACTS

A. Background

John Sims and Michael Heaman formed American Housing Corporation (AHC) in 1977, and, at all subsequent times relevant to this case, Sims and Heaman each owned 50 percent of the corporation. From its formation, and continuing through the 1990s, AHC developed, owned, operated and managed housing projects, often consisting of multi-unit residential facilities built on or near military bases and leased to the federal government. Broadly outlined, AHC's business plans involved forming a limited liability partnership (LLP) for each project, with AHC acting as the general partner, and the limited partners comprised of either individuals, corporations, limited liability companies (LLCs) or other partnerships that invested in the particular project. After construction of a project was completed, the LLP would own the finished rental property, and would derive income (after management expenses) from the rent payments remitted by the federal government. The LLP's income, in turn, inured to the benefit of the members of the LLP according to the terms of the partnership agreement.

During the same approximate time frame in which they operated AHC, Sims and Heaman also formed a general partnership, American Management Company (AMC), to provide property management services. In this way, or so the record suggests, there was money to be made both in the development and ownership of a rental property, and in the parallel opportunity afforded by charging for ongoing management services.

From April 1978 to February 1988, Karen Wisden worked for AHC as a secretary, office manager, receptionist, and "girl Friday."

B. The Prior Lawsuit

In February 1989, Wisden sued AHC in Los Angeles Superior Court case number C715262. Over the course of several months in 1993, Wisden and AHC, along with their respective lawyers, executed a "Stipulation for Entry of Judgment" to resolve her claims against her former employer. Although the stipulation's language regarding the payment schedule is somewhat vague, its overriding provision was unambiguous: in the event that AHC failed to make payments to Wisden in accord with a specified schedule, she would be entitled to request entry of a judgment in the amount of $75,000, with interest accruing at a rate of 10 percent per annum from February 1993.

AHC did not pay Wisden in accord with the terms of their stipulated settlement, and, in July 1994, the trial court entered a judgment in the amount of $75,000 in favor of Wisden, payable by AHC. For several years thereafter, Wisden undertook no meaningful attempts to enforce the collection of her $75,000 judgment against AHC. Wisden eventually hired new lawyers who noticed debtor's examinations to investigate AHC's resources to pay the existing judgment in her favor. In June 2001, Sims, as one of AHC's principals, submitted to a debtor's examination. In January 2002, Heaman did the same.

C. The Current Action

1. Causes of Action

In April 2002, Wisden filed the current action. Wisden's complaint named AHC and Sims and Heaman as defendants, and alleged four causes of action: (1st) fraudulent transfer against AHC, Sims and Heaman;[1] (2nd) a "creditor's suit" under Code of Civil Procedure section 708.210 et seq. against Sims and Heaman to recover property rightfully belonging to AHC — which, in turn, would result in the property being recovered to pay

[1] Wisden's first cause of action is not a model of pleading, but, during the course of the litigation, it appears to have become accepted by the parties, and by the trial court, and by our court in an earlier writ proceeding, that her cause of action embodied both a common law cause of action for fraudulent transfer, as well as a statutory cause of action under the Uniform Fraudulent Transfer Act (UFTA), Civil Code section 3439 et seq. All further section references to the UFTA are to the Civil Code.

AHC's underlying judgment debt to Wisden; (3rd) a collateral claim to amend the terms of the underlying 1994 judgment against AHC to include Sims and Heaman as the "alter-egos" of AHC; and (4th) violation of the Unfair Competition Law (UCL), (Bus. & Prof. Code, § 17200 et seq.) against Sims and Heaman for wrongfully receiving property from AHC. The common theme running throughout all of Wisden's causes of action was that AHC, acting by and through Sims and Heaman, had transferred a corporate asset — its interest in the "Bansal/Air Force Project" — to Sims and Heaman without receiving value in return, and that the corporate asset should be returned to AHC's possession, or traced to Sims and Heaman — under whatever legal theory was appropriate — to pay AHC's underlying judgment debt to Wisden.

2. Motions

In May 2003, Sims filed a motion for summary judgment or, in the alternative, summary adjudication of each of Wisden's four causes of action. In August 2003, the trial court entered an order granting summary adjudication in favor of Sims on Wisden's fourth cause of action alleging a violation of the UCL. The court's order granting summary adjudication provided: "As the court understands the evidence, it is undisputed that the . . . agreement transferring AHC's assets to Sims and Heaman was consummated in late 1996. Although [Sims and Heaman received money pursuant to] that agreement at a later time, the wrong was completed for the purpose of commencing the statute of limitations [on Wisden's UCL claim] in 1996."

Meanwhile, Wisden requested a jury trial on her common law cause of action for fraudulent transfer, and the trial court issued an order to show cause to address whether she was entitled to a jury trial on any of the causes of action alleged in her complaint. The trial court thereafter ruled that Wisden was not entitled to a jury trial, and she filed a petition for writ of mandate in our court. In December 2004, we granted Wisden's writ petition, ruling that she had a constitutional right to a jury trial on her cause of action alleging a common law fraudulent transfer claim. (See *Wisden v. Superior Court* (2004) 124 Cal.App.4th 750.)

Heaman settled with Wisden before trial, and, in September 2005, the trial court granted his motion for a determination that the settlement was made in good faith.

On December 6, 2005, the trial court issued orders bifurcating trial of Wisden's action into two phases. The bifurcation order provided that the court would first address Wisden's alter-ego claims, "creditor's suit," and statutory cause of action for fraudulent transfer under the UFTA, followed by a jury trial of her common law fraudulent transfer claim.

On June 15, 2006, the trial court struck AHC's answer, and entered its default on the ground that its corporate status had been suspended.

3. The Statement of Decision

In August 2006, the trial court heard the first phase of trial of Wisden's case, and took the matter under submission. On January 12, 2007, the trial court issued a statement of decision in which it found that a $3.4 million settlement paid by the Air Force in 2000 to resolve disputes related to the Bansal/Air Force Project included funds that "should have gone to AHC," that Sims had received more than $900,000 out of the proceeds of the settlement, that Sims's receipt of the money constituted a fraudulent transfer as to Wisden, and that Sims's receipt of the funds had occurred within "any applicable statute of limitations" under the UFTA or the creditor's suit statutes.

On April 30, 2007, the trial court entered judgment in favor of Wisden based on her causes of action under the UFTA and the creditor's suit statutes. After accounting for Heaman's settlement, the judgment awards a total of $154,551.54 to Wisden, payable by Sims.

4. The Current Appeal

On June 28, 2007, Sims filed a timely notice of appeal.

On July 17, 2007, Wisden filed a timely notice of cross-appeal. She challenges the trial court's orders to the extent they resulted in a denial of her right to a jury trial, and her claim for punitive damages.

DISCUSSION

I. Sims's Appeal

A. The Statute of Limitations Did Not Bar Wisden's UFTA Claim

Sims contends the judgment must be reversed because Wisden's statutory cause of action under UFTA section 3439.05 is barred as a matter of law by the four-year statute of limitations prescribed by the UFTA. To be more specific, Sims argues that Wisden's cause of action under the UFTA accrued as a matter of law in 1996, when AHC assigned away its interest in the Bansal/Air Force Project, and not, as the trial court ruled, in 2000, when the Air Force paid money to Sims (rather than to AHC) to settle disputes arising from the project. Sims argues that, given a 1996 date of accrual, there is no escaping that Wisden waited too long before filing her complaint in 2002. From Sims's perspective, the trial court's ruling on the statute of limitations on Wisden's cause of action under the UFTA was "tantamount" to a ruling that a cause of action for conversion does not accrue when a person steals property, but when the thief sells the property and receives cash in hand for his or her ill-gotten booty. Sims's argument does not persuade us to reverse the judgment in favor of Wisden under the UFTA.

B. The Statutes

UFTA section 3439.05 provides that a "transfer" made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made when two circumstances are present. First, the debtor made the transfer "without receiving a reasonably equivalent value in exchange for the transfer," and, second, the debtor was insolvent at the time of the transfer or the debtor became insolvent as a result of the transfer. A "transfer" within the meaning of the UFTA means "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes [a] payment of money, release, lease, and creation of a lien or other encumbrance." (§ 3439.01, subd. (i).)

UFTA section 3439.09, subdivision (b), prescribes the statute of limitations for a cause of action alleging a fraudulent transfer under UFTA section 3439.05. The cause of action "is extinguished unless [it] is brought . . . within four years after the transfer was made . . . ."

C. The Transferred Asset

As noted above, Wisden's current action is aimed at AHC's interest in one of the housing projects with which it was associated during its heyday. The "Bansal/Air Force" project, or "Sunnybrook" project, was a 200-unit apartment-style complex constructed at March Air Force Base. California Investors IV (CAL-IV), a limited partnership formed in 1985, developed and owned the Sunnybrook project, and entered a guaranteed 20-year lease for the project with the Air Force. Beyond this basic foundation, the facts become more complicated.[2]

1. Interests in CAL-IV

CAL-IV was comprised of a single general partner and a single limited partner. Bansal Properties, Ltd., a limited partnership also formed in 1985, was CAL-IV's general partner, and owned a 75 percent interest in the CAL-IV limited partnership. Mark Temple Construction, Inc. eventually owned the remaining 25 percent interest in CAL-IV as a result of an amended and restated agreement of limited partnership executed in November 1987.

2. Interests in Bansal

AHC's interests in the Sunnybrook project derived from AHC's interests in the Bansal limited partnership. The Bansal limited partnership had been formed by AHC, AMC, Ira Bacher and Martin Silverman by a limited partnership agreement executed in

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[2] The trial court's statement of decision sets forth the history of the Sunnybrook project. The parties' briefs on appeal do not materially contest the trial court's factual findings, nor challenge the sufficiency of the evidence in support of the court's findings. Instead, the parties' focus on appeal concerns the legal consequences of the undisputed facts. For purposes of this opinion, we adopt the court's factual findings regarding the Sunnybrook project in accord with the substantial evidence standard of review.

September 1985. Under the original terms of the Bansal limited partnership agreement, AHC and AMC were designated as Bansal's general partners, and Bacher and Silverman were designated as limited partners (it appears they loaned money to Bansal).

In the latter part of 1986, the members of the Bansal limited partnership executed a series of amendments to the terms of the original Bansal limited partnership agreement. In October 1986, AHC, AMC, Bacher and Silverman executed a "Third Amendment" to the original Bansal limited partnership agreement; this amendment provided that Bacher and Silverman had been added as general partners in Bansal, thus apparently resulting in a "limited partnership" which no longer had any limited partners. Then, in November 1986, AHC, AMC, Bacher and Silverman executed a "Fourth Amendment" to the Bansal limited partnership agreement; this amendment clarified in an amended Paragraph 5.9(b) that any distributions to be made to the general partners were to be made 50 percent to the capital accounts of AMC and AHC (they would work out the allocation between them by a separate agreement), and 25 percent to Bacher's capital account, and 25 percent to Silverman's capital account.

Two months later, in January 1987, AHC, AMC, Bacher and Silverman executed a "Fifth Amendment" to the Bansal limited partnership agreement. This fifth and final amendment to the Bansal limited partnership agreement effected two significant changes in the partnership's parameters. First, AMC withdrew as a general partner of Bansal and transferred all of its interests in Bansal to AHC. Second, Paragraph 5.9(b) regarding the disposition of any distributions was amended to provide that any partnership distributions were to be made 98 percent to AHC's capital account, and 1 percent to Bacher's capital account, 1 percent to Silverman's capital account.

So, as of January 1987 (insofar as we understand the record), AHC held a 98 percent interest in the Bansal limited partnership, which in turn, held a 75 percent interest in the CAL-IV limited partnership, which owned the Sunnybrook project. All of which means, in rough-hewn figures, that AHC held a majority percent interest in the

Sunnybrook project as of the late 1980s, all other intricacies ignored.[3] But, all was not set to remain quiet on the military base front.

During the 1990's, the federal government began implementing a military base closure program, and sometime around 1994, CAL-IV received notice that the Air Force intended to buy out the remaining years of the lease for the Sunnybrook project. In 1996 or 1997, the Air Force made good on its stated intentions, and made an initial payment of about $7.5 million to CAL-IV. This initial payment however, did not resolve a dispute between the Air Force and CAL-IV over whether the Air Force owed additional funds to CAL-IV under the terms of their long-term lease agreement.

Meanwhile, everyone involved in CAL-IV and Bansal apparently grew unhappy with everyone else involved in CAL-IV and Bansal, and lawsuits were filed. A common theme in the lawsuits appears to have been claims that Sims — acting either for himself and/or through AHC and/or through AMC — had arranged to overpay himself, and/or had arranged for AHC and/or AMC to be overpaid, for management services provided for the Sunnybrook project. Basically, several parties believed that the amount of money which they should have been receiving had been lessened because too much money had been going to Sims.

The CAL-IV and Bansal litigants apparently attempted to settle their disputes by introducing two fundamental changes into their intertwined relationships: first, Sims and Heaman would be drawn into the partnerships picture in their individual capacities, and, second, AHC and AMC would be erased from the picture. At least that is what the record suggests to us. The record further suggests that the omnibus purpose of these changes was to allow each party to be able to keep a better eye on each other party in

[3] The trial court's statement of decision calculated that AHC held a 50 percent in the Bansal limited partnership as of January 1987. We are not certain whether our math or the trial court's math is correct, but this point is not critical. The relevant fact is that AHC held at least a 50 percent interest in the Bansal limited partnership, which, in turn, held a 75 percent interest in CAL-IV, which, in turn, owned the Sunnybrook project.

their respective roles as general partners. It is these contemplated changes, however, that appear to have impacted Wisden, as the proverbial outsider, looking in.

In August 1996, in a possible attempt to implement the settlement outlined in the previous paragraph, AHC — acting through Sims, as its president — and AMC — acting through Heaman, as one of its general partners — executed an "Assignment of Interest in Limited Partnership." This written assignment stated that AHC was thereby assigning all of its interests in the Bansal limited partnership — presumably meaning its then-existing right to receive 98 percent of the partnership distributions — to AMC. The AHC-to-AMC assignment was followed in September 1996 by another "Assignment of Partnership" document, this one reciting that AMC was transferring all of its then-existing interests in the Bansal limited partnership in equal shares to Sims (one-half) and Heaman (one-half). AHC received no consideration for AHC-to-AMC assignment of AHC's interests in the Bansal limited partnership, and, in similar fashion, no consideration was given for the September 1996 AMC-to-Sims/Heaman assignment of AMC's ostensible interests in the Bansal limited partnership.

In November 1996, the Bansal limited partnership, acting by Sims and Heaman as general partners, filed an amendment to its certificate of limited partnership of record on file with the California Secretary of State. The filing with the Secretary of State reported that AHC and AMC had withdrawn as general partners in the Bansal limited partnership, and that Sims and Heaman had been added as general partners in Bansal. The filing expressly referred to the "Fifth Amendment" of the Bansal limited partnership agreement, but, as noted above, that amendment did not provide that AHC had withdrawn has a general partner, nor did it provide that Sims and Heaman had been added as general partners in Bansal.

3. The Settlement Payment

In December 1999, CAL-IV and the Air Force agreed to a $3.4 million settlement of their disputes arising from the termination of the long-term lease for the Sunnybrook housing project. In February 2000, CAL-IV (by Sims as its managing partner), and Bansal (by Sims as its managing partner), and Sims (individually), and Heaman

(individually), and Silverman (individually), and Bacher (through the trustee in his bankruptcy estate) entered a settlement agreement which established a schedule of payments to be made from the Air Force settlement. On February 11, 2000, Sims received approximately $914,000 out of the proceeds of the Air Force settlement.

In May 2000, CAL-IV filed a certificate of dissolution.

In June 2000, the Bansal limited partnership (by Sims, Heaman, Silverman, and Bacher's bankruptcy trustee) filed a certificate of dissolution.

AHC's corporate status was suspended during the course of the current litigation.

D. The Standard of Review

As a general rule, questions involved in determining whether an action is barred by the applicable statute of limitations are questions of fact. (*Sahadi v. Scheaffer* (2007) 155 Cal.App.4th 704, 713.) Where the facts are not disputed, however, the determination of whether an action is barred by the applicable statute of limitations becomes an issue of law. (*Ibid*.)

In this appeal, Sims argues that we should review the statute of limitations issue on Wisden's claim under the UFTA as an issue of law because the material facts are not in dispute. Sims further argues that we should rule — as a matter of law — that Wisden's claim under the UFTA is time-barred. For her part, Wisden argues that we should review the trial court's ruling on the statute of limitations issue in accord with the substantial evidence test, and that we should affirm the trial court's ruling because it is supported by the evidence found in the record. We agree with Sims that the material facts are not in dispute. For this reason, we will consider the statute limitations issue as a matter of law. Having done so, we disagree with Sims's ultimate conclusion, and now rule – as a matter of law – that Wisden's statutory cause of action under the UFTA was not time-barred.

E. The Legal Analysis of the Statute of Limitations

The parties' briefs on appeal address the statute of limitations issue from slightly different directions and, taken together, suggest that we need to find the answers to two inter-twining questions to resolve the statute of limitations issue. The first question is

what type of act by a debtor constitutes a "transfer" within the meaning of the UFTA? If a transfer is identified, the second question then becomes *when* was the transfer "made" within the meaning of the UFTA? As applied to the facts found in the current case, the first question requires us to examine whether AHC's execution of a written document in August 1996 reciting that it was assigning its interest in the Bansal limited partnership to AMC constituted a transfer within the meaning of the UFTA. If AHC's execution of the assignment did constitute a transfer, the second question then comes into play, and we must examine when the assignment/transfer was made.

1. What Constitutes a "Transfer"

Determining whether a particular act by a debtor constituted a transfer within the meaning of the UFTA will be an easy task in many cases. For example, it cannot be doubted that a debtor made a transfer by delivering cash to a third party, or by delivering a grant deed or other document of title to a third party. In the case before us today, however, the transfer determination is trickier because AHC did not deliver a readily identifiable, hard asset to AMC. According to Sims, we must find — as a matter of law – that AHC made a transfer by executing the document reciting that AHC was assigning its interest in distributions from the Bansal limited partnership to AMC. To determine whether Sims is correct, we start with the statutory language of the UFTA.

As we noted above, UFTA section 3439.01, subdivision (i), defines a transfer to include "every mode" of disposing of, or parting with, an asset or an interest in an asset. Needless to say, this statutory language is both broad and malleable, and it requires us to determine whether AHC "disposed of" or "parted with" an asset or an interest in an asset when it executed the written assignment in August 1996. Wisden would have us say, no, on the ground that AHC's assignment was "void for lack of consideration." But Wisden cannot be correct because the UFTA expressly provides that a transfer by a debtor is fraudulent as to a creditor when the debtor does not *receive a reasonably equivalent value in exchange for the transfer*. In other words, the UFTA itself implicitly, if not expressly, provides that a transfer may constitute something other than, and less than, a binding

contract (i.e., accompanied by consideration) assigning an asset to a third party. In short, the UFTA contemplates that an out-and-out gift may constitute a transfer.

On the other hand, a transfer within the meaning of the UFTA must be something more than a creditor's mere placement of a signature on a piece of paper, to which he or she then points while shouting out to the world, "Look what I did." No, for an act to constitute a transfer within the meaning of the UFTA, it must be something more than a staged production. A transfer must be some type of act or "mode" by a debtor that results in a legally recognizable change in the relationship between the transferor and the transferee, and the asset at issue. This is where Sims's conversion model comes up short in our view. When Sims's proverbial thief steals property, he or she takes actual possession of, and asserts actual control over, the stolen property, and is in a position to sell the stolen property to the proverbial buyer. We do not see the same nature of transaction in the current case. AHC's act of executing the assignment of its interests in the Bansal limited partnership essentially put to paper a promise from AHC to AMC, enforceable or not, that any *future distributions* from the partnership would, *when realized*, belong to AMC. AHC did not, in August 1996, assign an interest in a then-existing, sum-certain, right to a partnership distribution to AMC. In the most basic sense, AHC set up an instrumentality to effectuate future transfers of partnership distributions, when they were due, to AMC.

This does not mean, however, that we consider Sims's conversion model to be wholly off the mark. On the contrary, we believe that the determination of whether a debtor made a transfer of an asset should include an examination of whether possession and/or control, actual or constructive, of the asset ended up in the hands of the transferee. In our view, such a focus complements the UFTA's purposes. Where a debtor retains possession and/or control over an asset, a creditor may reach the asset by traditional attachment or enforcement procedures; it is only when a debtor places an asset into the possession and/or control of a third party that the creditor's ability to collect may become frustrated, thus paving the way for the UFTA's remedies. For these reasons, we find that the determination of whether AHC made a transfer to AMC must include an examination

of whether, as a result of AHC's execution of the written assignment in August 1996, AMC took possession of, and/or exercised some manner of control over, AHC's interests in the Bansal limited partnership.

Having undertaken that examination, we find that AHC's execution of the written assignment in August 1996 constituted a transfer within the meaning of the UFTA. The undisputed facts in the record show that, after August 1996, both AHC and AMC acted in accord with their joint understanding that AHC's rights in any future distributions from the Bansal limited partnership would inure to AMC's benefit, and would be enforceable by AMC, as AHC's assignee. Indeed, one month after AHC's assignment, AMC took it upon itself, without objection by AHC, to execute a written document reciting that it was assigning its interest in the Bansal limited partnership to Sims and Heaman. We find that an assignment without consideration, but upon which both the assignor and assignee rely and act, constitutes a transfer within the meaning of the UFTA.

2. When a Transfer is Made

The remaining question, therefore, is *when* was AHC's assignment/transfer of *its interest in the proceeds of the Air Force settlement* made? Sims argues that it was made, as a matter of law, in August 1996, at the same instant that AHC executed the assignment of its interests in the Bansal limited partnership. We disagree.

As noted above, AHC's written assignment in August 1996 essentially resulted in setting up an instrumentality to effectuate transfers of any *future distributions* from the Bansal limited partnership to AMC. Until such time, however, that AHC's right to such a distribution come into existence, AMC did not, as AHC's assignee, have any derivative right to such a distribution. In other words, any transfer pursuant to AHC's written assignment to AMC was not actually made until the asset which was to be transferred first came into existence. In the final analysis, we find that insofar as the proceeds of the Air Force settlement are concerned, the transfer of those proceeds could not have been made, and was not made, until after the proceeds were actually paid by the Air Force in

early 2000. Before 2000, AHC had nothing to transfer to AMC except a hope for a future settlement.

F. Conclusion

For all of the reasons stated above, Wisden's cause of action under the UFTA for a fraudulent transfer was filed within the four-year statute of limitations. No transaction or other act at any time during 1996 accomplished a completed transfer of AHC's interest in Bansal's interests in the proceeds from the Air Force settlement. But in 2000, the portion of the Air Force's settlement payment which should have gone to CAL-IV, then to Bansal, then to AHC, and then, by virtue of AHC's assignment, to AMC, instead went to Sims and Heaman. Sims's receipt of proceeds from the settlement was the result of a transfer by AHC within the meaning of the UFTA, and that transfer was made at the time Sims received the funds into his possession.

II. The Statute of Limitations Did Not Bar Wisden's Creditor's Suit Claim

Sims contends the judgment against him must be reversed because the trial court erred by ruling that Wisden's cause of action under the creditor's suit statutes (Code Civ. Proc., § 708.210 et seq.) accrued in 2000. As he did in connection with Wisden's cause of action under the UFTA, Sims argues the trial court should have found that her cause of action under the creditor's statutes also accrued in 1996. In light of our decision that Wisden's cause of action under the UFTA accrued in 2000, we see no need for an extensive discussion of Sims's challenge to the trial court's statute of limitations ruling vis-à-vis Wisden's creditor's suit claim. We simply note that the same analysis applies. The proceeds from the Air Force settlement were not steered away from AHC until 2000, when the settlement actually came into existence.

III. Laches Does Not Bar Wisden's UFTA Claim

We reject Sims's contention that the judgment must be reversed because trial court "never ruled on his laches defense" to Wisden's fraudulent transfer cause of action under the UFTA. A review of the record discloses that Sims did not plead laches as an affirmative defense to Wisden's first cause of action for fraudulent transfer under the UFTA. Paragraph 18 of Sims's answer alleged: "Plaintiff has unreasonably and unfairly

delayed asserting the *fourth cause of action* [for violation of the UCL]. According, the *fourth cause of action* is barred by laches." (Emphasis added.)

Sims prevailed by virtue of an order granting summary adjudication on Wisden's fourth cause of action under the UCL based on a statute of limitations defense, and, thus, his laches defense to that cause of action was moot before the trial of Wisden's claims. In other words, by the time of trial it was not necessary for the trial court to consider and rule on the laches defense interposed by Sims.

IV. Sims Fails to Demonstrate Error in the Award

Sims contends the trial court miscalculated the amount of money which was due to AHC on Wisden's "creditor's suit" under Code of Civil Procedure section 708.210 et seq. If we understand his argument correctly, Sims's position seems to be that AHC, by virtue of Wisden's creditor's suit, should not have recovered sufficient money from Sims to be able to pay the amount of the judgment that now stands entered in favor of Wisden (i.e., $154,000). In other words, Sims argues that AHC — through Wisden's creditor's suit — should have been found to be entitled to recover some amount of money less than $154,000, and, thus, by extension, any transfer of money from AHC to Sims must have been in amount less than $154,000, and, thus, by extension, any judgment against Sims should be in an amount less than $154,000.

We reject Sims's argument because he cannot convince us that the trial court's findings, implicit and express, on Wisden's creditor's suit claim are not supported by substantial evidence. The record shows that Sims received more than $900,000 from the Air Force settlement, and we do not understand from his arguments on appeal how more than $750,000 of that money must be viewed as not having properly belonged to AHC. In other words, our rejection of Sims's argument is not so much a matter of whether or not Sims is actually correct, fact-wise; it is a matter of his failing to show the factual error to our court on appeal.

V. Wisden's Cross-Appeal

A. Remand for Jury Trial is not Warranted

Wisden contends the trial court erred in denying her request for a jury trial on her common law cause of action for fraudulent conveyance. To be more accurate, Wisden acknowledges that she has been awarded her "full compensatory damages" under the trial court's judgment on her statutory cause of action under the UFTA, and that this makes "the denial of a jury trial as to [her] compensatory damages . . . moot" under her common law cause of action for fraudulent conveyance, but she nonetheless argues the judgment should be undone, so that she may present to a jury the claim for punitive damages which is attached to her common law cause of action for fraudulent conveyance. Reframed in other words, Wisden wants a jury trial, to be followed by a final judgment which incorporates her existing award for compensatory damages, plus punitive damages, if any, awarded by the jury. Wisden's arguments do not convince us that further proceedings in her case are warranted.

1. The Trial Court's Rulings

On Friday, August 18, 2006, Sims testified in his own defense. Wisden's counsel cross-examined Sims during the afternoon session the same day. Near the end of the day, Wisden's counsel advised the trial court that he had no more questions "at [that] point," but "there [remained] the issue about the net worth on punitive damages." The trial court responded by noting the time, and Wisden's counsel replied, "That's fine, your Honor." Sims's counsel then asked a handful of questions on redirect. At that point, the lawyers on both sides agreed there were no more questions, with Wisden's counsel adding, "other than reserving the right on net worth on punitive damages."

The trial resumed on the afternoon of Tuesday, August 21, 2006, with Wisden's counsel calling Dana Brenner, an accountant who had been working for Sims and Heaman and their various partnerships "since about the end of [the] 1970's." Near the end of direct examination of Brenner by Wisden's counsel, the following exchange took place:

"[WISDEN'S COUNSEL]: Your Honor, we left one issue kind of hanging, punitive damages and net worth, and I won't know when your Honor has received part of the decision and I prevail it [or it] goes on to the jury part . . . . But I do have questions of this witness on that.

"THE COURT: Well, we have passed that with respect to the other witnesses. We might inquire that aspect with respect to the that will be consistent on that point, so — [*sic*]

"[WISDEN'S COUNSEL]: Okay. But I will be allowed an opportunity later on if the court determines it appropriate?

"THE COURT: If the court determined it is appropriate, you will have that inquiry, sir.

"[WISDEN'S COUNSE]: Thank you. Those are all the questions I have at this point."

On November 22, 2006, the trial court issued its "Tentative Decision After Bench Trial." The court's Tentative Decision was silent on the issue of punitive damages. On December 1, 2006, Wisden's counsel filed a request for clarification of the court's ruling on punitive damages. More specifically, Wisden requested: "The court's determination of the legal issue of whether the UFTA allows an award of punitive damages . . . . [¶] If the court determines that the UFTA allows an award of punitive damages, the court's determination of the factual issue of entitlement to punitive damages in this case."

On January 12, 2007, the trial court issued its Statement of Decision, including the following analysis of Wisden's claim for punitive damages based on her cause of action under the UFTA:

"In her Request for Clarification filed after the Court had issued its Tentative Decision, Ms. Wisden [requested] a determination whether she is entitled to punitive damages under [UFTA section] 3439.04. Assuming without deciding that there is authority for the award of punitive damages under that section, [the Court finds that Ms. Wisden] is not entitled to them for three principal reasons.

"First, the Court finds that plaintiff's entitlement to an award under the UFTA arises under [UFTA section] 3439.05, and not under section 3439.04. Ms. Wisden did not prove to the Court's satisfaction any claim under section 3439.04, and hence the 'badges of fraud' under section 3439.04 are of doubtful relevance.

"Second, while Ms. Wisden did prove the transactions fell within the UFTA, she did not prove, by clear and convincing evidence, that Mr. Sims was guilty of oppression, malice or fraud directed at her. Specifically, neither the alleged concealment of facts from Mr. Sim['s] ex-wife, nor the existence of the various pieces of litigation in which Sims and/or AHC were involved . . . persuades the Court to the contrary. [fn. omitted.]

"Third, Ms. Wisden's argument fails because it relies heavily on conduct from outside the statute of limitations on her various claims, and the Court has not been presented with any authority which would somehow make that conduct applicable to prove oppression, malice or fraud when it is time-barred as a direct claim. The Court therefore concludes that despite full opportunity to do so, plaintiff has failed to prove oppression, fraud or malice, and hence is not entitled to recover punitive damages. [fn. omitted.]"

B. Analysis

Based on the trial record submitted on appeal, the parties' briefs on appeal, and the parties' acknowledgements during oral arguments in our court, four components of this case are unmistakably established. First, Wisden's complaint alleged: (1) a statutory cause of action under the UFTA, to which she had attached a claim for punitive damages, and (2) a common law cause of action for fraudulent conveyance, to which she had attached a claim for punitive damages. Second, Wisden's UFTA cause of action, with its attendant claim for punitive damages, was submitted to the trial court for adjudication. Third, the trial court decided not to award punitive damages to Wisden on her UFTA cause of action because she did not prove to the trial court's satisfaction, by clear and

convincing evidence, that Sims was guilty of oppression, fraud or malice. Finally, Wisden does not on appeal assign any procedural or evidentiary error to the trial court's decision not to award punitive damages on her UFTA claim.

In our view, these four case components necessarily frame the issue on appeal as follows: Was Wisden – having failed to prove her claim for punitive damages under her UFTA cause of action at the initial court trial – thereafter entitled to a second trial – this time by jury – to prove her claim for punitive damages under on her common law cause of action for fraudulent conveyance? We conclude that Wisden was not entitled to have two bites at the same punitive damages apple.

Collateral estoppel is a judicially created doctrine precluding a party who has previously litigated an issue against another party from relitigating the identical issue a second time against the same opposing party. The collateral estoppel doctrine promotes judicial economy by minimizing repetitive litigation, and by preventing inconsistent judgments which may undermine the integrity of the judicial system. (*Syufy Enterprises v. City of Oakland* (2002) 104 Cal.App.4th 869, 878.) Five elements must be present for application of collateral estoppel: (1) the issue sought to be precluded from relitigation must be identical to the issue decided in a former proceeding; (2) the issue must have been actually litigated in the former proceeding; (3) the issue must have been necessarily decided in the former proceeding; (4) the decision in the former proceeding must be final and on the merits; and (5) the party against whom issue preclusion is applied must be the same as the party to the former proceeding. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) All of these elements are present in the case before us today, and precluded Wisden from relitigating the issue of fraud, oppression or malice.

The issue which would have been litigated at a second trial between Wisden and Sims was identical to the issue actually litigated at the initial court trial between Wisden and Sims, namely, whether Sims acted with fraud, oppression or malice, thus justifying an award of punitive damages. This issue was directly presented to the trial court at the initial court trial, and the trial court expressly decided that Wisden had failed to prove her claim that Sims had acted with fraud, oppression or malice. Wisden has conceded that

she presented at the initial trial all of the evidence she has available on the issue of fraud, oppression or malice. We are satisfied under these circumstances that no more was or is needed to bar Wisden from relitigating the issue a second time. (See generally, 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 460, p. 517 [the collateral estoppel doctrine may be applied to rulings of a trial court "in various independent stages of a proceeding"].)

VI. Summary Adjudication of the UCL Claim Does Not Warrant Reversal

Wisden contends the trial court erred in granting summary adjudication of her cause of action for violation of the UCL. She "presents this argument as a precaution only," in the event we decide to reverse the judgment in her favor. Inasmuch as we determined above that the trial court correctly entered the judgment awarding Wisden, in her own words, her "full compensatory damages," we summarily dismiss Wisden's challenge to the trial court's summary adjudication ruling on her UCL claim.

VII. The County Club Membership Issue Was Properly Resolved

At trial, Wisden raised an issue whether a membership at the Bel-Air Country Club in Sims's name should be found to belong to AHC because it had been purchased with AHC's funds, and whether she could, on AHC's behalf, recover the membership as an AHC asset. The trial court said no. On appeal, Wisden contends the trial court erred in ruling that her claim on AHC's behalf to recover Sims's country club membership was barred by the statute of limitations. She "presents this argument as a precaution only," in the event we decide to reverse the judgment in her favor. Inasmuch as we determined above that the trial court correctly entered the judgment awarding Wisden, in her own words, her "full compensatory damages," we summarily dismiss Wisden's challenge to the trial court's ruling regarding the Bel-Air County Club membership.

VIII. The Issue of Loans Owed by Sims to AHC Was Properly Resolved

At trial, Wisden raised an issue whether loans owed by Sims to AHC were due and outstanding as of 1999, and whether she could, on AHC's behalf, pursue AHC's rights to collect on those loans. On appeal, Wisden contends the trial court erred in ruling that her claim on AHC's behalf to collect on Sims's loans was barred by the statute of limitations. She "presents this argument as a precaution only," in the event we decide to reverse the

judgment in her favor. Inasmuch as we determined above that the trial court correctly entered the judgment awarding Wisden, in her own words, her "full compensatory damages," we summarily dismiss Wisden's challenge to the trial court's ruling regarding Sims's loans to AHC.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BIGELOW, J.

We concur:

RUBIN, Acting P. J.

BAUER, J.*

* Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.